9229/06

Filed on 27.12.06
by Shri Manish Lunia

(03)

(1)

Single Bench

IN THE HIGH COURT OF JUDUCATURE OF AT BILASPUR

CHHATTISGARH

CRIMINAL REVISION NO. 142 /2006

APPLICANT : Dulari Ram Kaushik, Aged 63 years,

ACCUSED S/o. Madhulal Kaushik, R/o. Samalpuri, P.S. Hirri, District Bilaspur (CG) At Present R/o. Civil Lines, Baloda Bazar, Raipur, District Raipur (CG)

RECEIVED-COPY 27.12.06 A.G. BILASPUR CLERK

VERSUS

NON-APPLICAINT : State of Chhattisgarh,

Through: Police Station ~~Ramkola~~ Baloda Bazar, Raipur @

District ~~Surguja~~ (CG)

REVISION UNIDER SECTION 397 READ WITH SECTION 401 OF CRIMINAL PROCEDURE CODE, 1973

XI-HC-22

(166)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक Cr. Rev. 142/सन् 2006

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

30.03.2006

Applicant-Dulari Ram Kaushik by Shri Manoj Paranjpe, Advocate.

State by Shri Ashish Shukla, Government Advocate.

Arguments were finally heard today.

This revision is directed against the order dated 17.01.2006 passed by Shri B.L.Tidke, Special Judge, Scheduled Caste & Scheduled Tribe (Prevention of Atrocities) Act, Raipur in Special Sessions Case No.112/2005 whereby charges under Sections 409, 420, 467 read with 120-B of I.P.C. and under Section 3 (2) (v) of the Scheduled Caste & Scheduled Tribe (Prevention of Atrocities) Act, 1989 (hereinafter referred to as 'the Act') were framed against the applicant.

It is alleged that the applicant, one Kenjram Verma and Tuneshwar Prasad Soni fraudulently withdrew the amount lying at the balance of G.P.F. amount of one Chandra Prakash Kurre, a member of the Scheduled Caste by furnishing bogus withdrawal slips and applications. A written complaint was lodged on 25.2.2004 by Chandra Prakash Kurre at the Police Station, Baloda Bazar. After completion of investigation, prosecution was launched against the applicant and two others mentioned above under Sections 409, 420, 467 read with 120-B of I.P.C. and under Section 3 (2) (v) of the Act.

-2-

[पीछे देखिये

(107)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित —2—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Vide order dated 17.1.2006, learned Special Judge (Atrocities), Raipur framed charges under the aforesaid sections against the applicant herein, Kenjram Verma and Tuneshwar Prasad Soni.

Shri Manoj Paranjpe, learned counsel for the applicant, has submitted at the very outset that he would only assail the framing of charge under Section 3 (2) (v) of the Act against the applicant in this revision. Placing reliance on *Masumsha Hasanasha Musalman v. State of Maharashtra* reported in A.I.R. 2000 SC 1876 and *State of M.P. v. S.B.Johari and others* reported in A.I.R. 2000 S.C. 665, learned counsel for the applicant contended that there was absolutely nothing to show that the applicant had committed the alleged offence on the basis that Chandra Prakash Kurre belongs to Scheduled Caste category or that the amount lying in his G.P.F. account belonged to a member of the Scheduled Caste. He argued that to attract the provisions of section 3 (2) (v) of the Act the *sine qua non* is that the victim should be a person who belonged to a Scheduled Caste or Scheduled Tribe and that the offence under the Penal Code is committed against him on the basis that such person belongs to Scheduled Caste or Scheduled Tribe. In the absence of such ingredients, the offence under Section 3 (2) (v) is not made out against the applicant. On the other hand, Shri Ashish Shukla,

[पीछे देखिये

(108)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

learned Government Advocat argued in support of the impugned order.

Having heard the rival contentions and after perusing the record the record, I am of the considered opinion that this revision deserves to be allowed. It is settled law that in order to attract the provisions of Section 3 (2) (v) of the Act, the prosecution has to establish that the offences punishable with imprisonment for a term of ten years or more against a person or property was committed on the ground that such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to such member. In the present case, the written complaint lodged by Chandra Prakash Kurre on 25.2.2004 and also his statement recorded under Section 161 Cr.P.C. does not even have a semblance of material to show that the offence alleged was committed by the applicant and two other co-accused on the ground that Chandra Prakash Kurre is a member of Scheduled Caste or since the amount deposited in his G.P.F. account belonged to a member of Scheduled Caste. Relying upon the judgment rendered in *Masumsha Hasanasha Musalman v. State of Maharashtra* reported in A.I.R. 2000 SC 1876, in the absence of the aforesaid conditions which are *sine qua non* for attracting Section 3 (2) (v) of the Act, it cannot be said even *prima facie* that

-5-

(पीछे देखिये)

(109)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित —५—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

there is material to show that the applicant and two others have committed an offence under Section 3 (2) (v) of the Act.

The test for framing a charge against a person accused of an offence is well settled by a catena of decision. It is now well established that in order to frame a charge against a person, the material produced by the prosecution has to be tested on the touchstone that if such material is taken at its face value, the offence alleged against such person would be made out.

Applying the aforesaid test to the present case, I am of the considered opinion that even if the entire material laid before the trial Court by the prosecution was taken at its face value, the offence under Section 3 (2) (v) of the Act is not made out since there is nothing to show that the offence was committed on the ground that Chandra Prakash Kurre is a member of Scheduled Caste or that the G.P.F. account belonged to a member of Scheduled Caste. Thus, the impugned order so far as it relates to framing of charge under section 3 (2) (v) of the Act against the applicant and two others namely Kenjram Verma and Tuneshwar Prasad Soni deserves to be set aside.

Relying upon *Vajrapu Sambayya Naidu and others v. State of A.P. and others* reported in 2003 Cri. L.J. 4433, I am of the considered opinion that the benefit of this order passed in this

(पीछे देखिये)

—5—

XI-HC-22

(110)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
Anjani	Criminal Revision should also enure to the co-accused Kenjram Verma and Tuneshwar Prasad Soni. In the result this revision is allowed. Charge under Section 3 (2) (v) of the Act framed against the applicant herein, Kenjram Verma and Tuneshwar Prasad Soni passed by the learned Special Judge vide order dated 17.01.2006 in Special Sessions Case No. 112/2005 is set aside. Sd/- Dilip Raosaheb Deshmukh Judge	